

**PUBLIC VERSION**

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Attorneys for Plaintiff  
VERIGY US, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

VERIGY US, INC, a Delaware Corporation

Plaintiff,

vs.

ROMI OMAR MAYDER, an individual;  
WESLEY MAYDER, an individual; SILICON  
TEST SYSTEMS, INC., a California Corporation;  
and SILICON TEST SOLUTIONS, LLC, a  
California Limited Liability Corporation,  
inclusive,

Defendants.

Case No. C07-04330 RMW (HRL)

**DECLARATION OF MICHAEL W.  
STEBBINS IN SUPPORT OF OPPOSITION  
TO DEFENDANTS' MOTION FOR  
SUMMARY AJUDICATION AND FOR  
MODIFICATION OF PRELIMINARY  
INJUNCTION**

Date: September 5, 2008  
Time: 9:00 am  
Ctrm.: 6  
Judge: Hon. Ronald M. Whyte

Complaint Filed: August 22, 2007  
Trial Date: None Set

AND RELATED CROSS ACTIONS

**PUBLIC VERSION OF HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY**

**DOCUMENT SUBMITTED UNDER SEAL**

1 I, Michael W. Stebbins, declare as follows:

2 1. I am an attorney licensed to practice law before all of the courts of the State of  
3 California. I am a partner with the law firm of Bergeson, LLP, counsel of record for Plaintiff  
4 Verigy US, Inc. ("Verigy") in the above-captioned action. I have personal knowledge of the facts  
5 set forth in this declaration, and, if called to do so, I could and would competently testify thereto.

6 2. I submit this declaration in support of Verigy's Opposition to Defendants' Motion  
7 for Summary Adjudication and Motion for Modification of Preliminary Injunction.

8 3. Attached hereto as **Exhibit A** is a true and correct copy of an e-mail, dated January  
9 24, 2008, from Romi Mayder to Chris Straube, Honeywell's manufacturer's representative which  
10 lists the five non-functioning features of Defendants' ASIC. This document was produced by Mr.  
11 Straube and was Exhibit 186 to his deposition taken on July 31 and August 14, 2008.

12 4. Attached hereto as **Exhibit B** is a true and correct copy of an e-mail string, dated  
13 July 17, 2008, between Romi Mayder, Chris Straube and Honeywell representatives which  
14 attaches a new proposal for Phase II of the development and manufacture of Defendants' product.  
15 This document was produced by Defendants, has been marked as STSI 000292-STSI 000305 and  
16 was Exhibit 195 to the Straube Deposition, taken on July 31 and August 14, 2008. The page  
17 labeled STSI 000295 is a timeline for the Phase II development indicating that the parts will be  
18 available for shipping on December 12, 2008.

19 5. Attached hereto as **Exhibit C** is a true and correct copy of the January 15, 2008  
20 Transcript of Preliminary Injunction Hearing.

21 6. Attached hereto as **Exhibit D** is a true and correct copy of the April 11, 2008  
22 Transcript of Contempt Hearing.

23 I declare under penalty of perjury under the laws of the United States of America that the  
24 foregoing is true and correct and that this declaration was executed this 15th day of August, 2008  
25 at San Jose, California.

26 \_\_\_\_\_/s/  
27 Michael W. Stebbins  
28

**EXHIBIT A**

**HIGHLY  
CONFIDENTIAL**

**ATTORNEYS EYES  
ONLY**

**FILED UNDER SEAL**

# **EXHIBIT B**

**HIGHLY  
CONFIDENTIAL**

**ATTORNEYS EYES  
ONLY**

**FILED UNDER SEAL**

**EXHIBIT C**

**HIGHLY  
CONFIDENTIAL**

**ATTORNEYS EYES  
ONLY**

**FILED UNDER SEAL**

# EXHIBIT D

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

VERIGY US, INC., A ) C-07-04330 RMW  
DELAWARE CORPORATION, )  
 ) SAN JOSE, CALIFORNIA  
PLAINTIFF, )  
 ) APRIL 11, 2008  
VS. )  
 ) PAGES 1-28  
ROMI OMAR MAYDER, AN )  
INDIVIDUAL; WESLEY )  
MAYDER, AN INDIVIDUAL; )  
SILICON TEST SYSTEMS, )  
INC., A CALIFORNIA )  
CORPORATION; AND SILICON )  
TEST SOLUTIONS, LLC, A )  
CALIFORNIA LIMITED )  
LIABILITY CORPORATION, )  
INCLUSIVE, )  
DEFENDANTS. )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE RONALD M. WHYTE  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: BERGESON, LLP  
BY: MINDY M. MORTON  
303 ALMADEN BOULEVARD, SUITE 500  
SAN JOSE, CALIFORNIA 95110

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

APPEARANCES (CONTINUED)

FOR THE DEFENDANT: MOUNT & STOELKER, P.C.  
BY: DANIEL S. MOUNT,  
DAN H. FINGERMAN, AND  
KEVIN M. PASQUINELLI  
333 WEST SAN CARLOS STREET  
SUITE 1650  
SAN JOSE, CALIFORNIA 95110



10:03:09 1 THE COURT: WHAT CASE DO YOU FEEL SAYS  
10:03:13 2 THAT IT'S PUNITIVE TO EXTEND AN OLD ORDER?

10:03:16 3 MR. MOUNT: WELL, YOU CANNOT -- ACTUALLY,  
10:03:19 4 MR. FINGERMAN MIGHT HELP ME WITH THAT, YOUR HONOR.  
10:03:22 5 HE HAD BRIEFED THAT.

10:03:23 6 I BELIEVE IT WAS --

10:03:26 7 MR. FINGERMAN: IT WAS IN, IN HICKS  
10:03:32 8 VERSUS FEIOCK CITED IN OUR BRIEF.

10:03:32 9 THE COURT: WHAT'S THE SITE?

10:03:34 10 MR. FINGERMAN: I'M SORRY?

10:03:35 11 THE COURT: WHAT'S THE SITE?

10:03:36 12 MR. FINGERMAN: IT WAS 485 U.S. 624, A  
10:03:39 13 SUPREME COURT CASE IN 1988 WHERE THE COURT HELD  
10:03:44 14 THAT A, A REMEDY HAVING ANY FIXED TERM WAS PUNITIVE  
10:03:50 15 RATHER THAN COMPENSATORY.

10:03:53 16 AND IT WAS ALSO NOT COERCIVE BECAUSE THE  
10:03:55 17 FIXED TERM OF THE -- THE FIXED TERM OF THE, OF ANY  
10:04:01 18 NEW INJUNCTION WOULD MEAN THAT THE DEFENDANTS WOULD  
10:04:04 19 NOT HAVE AN OPPORTUNITY TO AVOID IT.

10:04:06 20 AND THERE HASN'T BEEN ANY SHOWING IN THE  
10:04:09 21 PAPERS OF ANY HARM AND THERE HASN'T BEEN ANY  
10:04:12 22 SHOWING THAT ANY SPECIFIC DURATION OF AN INJUNCTION  
10:04:15 23 WOULD COMPENSATE ANY SPECIFIED HARM HERE.

10:04:20 24 THE COURT: OKAY.

10:04:23 25 MR. MOUNT: AND THE CASES THAT ARE RELIED

10:05:49 1 OUT, THAT IT WOULD BE PUNITIVE TO DELAY THE PERIOD  
10:05:53 2 OF -- FOR THE PERIOD OF TIME THAT THEY GOT THE JUMP  
10:06:01 3 ON THE RELEASE OF THEIR PRODUCT.

10:06:02 4 MR. MOUNT: WELL, BUT THE CHANGE OF IT,  
10:06:04 5 TO BASE THAT ON A CONTEMPT IS THE PROBLEM, YOUR  
10:06:07 6 HONOR.

10:06:09 7 EVEN IN THE MACOMB CASE WHERE SOMEONE  
10:06:11 8 WANTED TO CHANGE THE SCOPE OF AN INJUNCTION, IN  
10:06:13 9 MACOMB, WHICH, AGAIN, IS 336 U.S. 187, THE COURT  
10:06:17 10 CONSIDERED THE NEW REQUEST AS AN APPLICATION TO  
10:06:21 11 AMEND THE PLEADING.

10:06:23 12 THAT WAS A WAGE AND HOUR CASE AND THEY  
10:06:25 13 WERE ALLOWED TO EXTEND THE DURATION, BUT THEY HAD  
10:06:27 14 TO EFFECTIVELY TREAT IT AS THE FILING OF A NEW  
10:06:31 15 ACTION AND A NEW RELIEF.

10:06:33 16 BUT LET ME GO BACK TO WHAT I THINK IS  
10:06:35 17 MAYBE YOUR FUNDAMENTAL CONCERN, AND THAT IS THE  
10:06:38 18 HEAD START.

10:06:39 19 YOUR HONOR, YOU MAY RECALL THAT YOU, YOU  
10:06:41 20 LOOKED IN GREAT DETAIL AT WHAT AMOUNT OF BENEFIT  
10:06:45 21 WAS OBTAINED BECAUSE OF THE AVAILABILITY OF  
10:06:50 22 INFORMATION.

10:06:51 23 AND BY, BY ENJOINING ACTIVITY FOR FIVE  
10:06:55 24 MONTHS -- WHICH WAS WELL BEYOND THE TWO WEEKS THAT  
10:06:57 25 WE FELT THEIR EXPERT HAD ACKNOWLEDGED WAS THE OUTER

10:07:00 1 END, THEY ASKED FOR EIGHT MONTHS BECAUSE THEY  
10:07:02 2 THOUGHT THAT IT WAS IN AN EIGHT MONTH PROCESS.

10:07:05 3 BUT YOU CAREFULLY WENT THROUGH THAT AND  
10:07:07 4 CAME TO A CONCLUSION THAT A FIVE MONTH HEAD START  
10:07:10 5 WAS FAIR. YOU RECALL WE WORKED IN-HOUSE FOR A  
10:07:12 6 NUMBER OF MONTHS. WE HAD ACCESS TO INFORMATION.  
10:07:15 7 AND YOUR DETERMINATION THAT A FIVE MONTH HEAD START  
10:07:18 8 SHOULD BE STOPPED IS WHAT YOU DID.

10:07:19 9 IT WAS A BALANCED -- IT WAS A BALANCING  
10:07:21 10 THAT RELATED EXACTLY TO THE ISSUES CONCERNING  
10:07:26 11 WHAT'S THE SCOPE OF THE PROTECTION, WHAT'S THE  
10:07:27 12 SCOPE OF THE TRADE SECRET.

10:07:29 13 AND THAT SHOULDN'T BE UPSET NOW AND SAY,  
10:07:31 14 WELL, I'M ANNOYED OR I BELIEVE THAT YOU'VE DONE  
10:07:35 15 SOMETHING WRONG IN THIS CONTEMPT PROCEEDING AND,  
10:07:38 16 THEREFORE, I'M GOING TO CHANGE MY ANALYSIS ABOUT  
10:07:40 17 THE HEAD START ISSUE.

10:07:42 18 AT THE TIME YOU RULED ON THAT HEAD START,  
10:07:44 19 YOUR HONOR, WE HAD ARGUED TO YOU THAT INTEL WAS  
10:07:47 20 PRESENT AND HAD WANTED THIS PRODUCT. YOU WERE  
10:07:49 21 FULLY AWARE, EVERYONE WAS FULLY AWARE THAT INTEL  
10:07:52 22 WAS IN THE PICTURE.

10:07:53 23 AND THAT ANALYSIS DOESN'T CHANGE BECAUSE  
10:07:56 24 OF THE CURRENT ARGUMENT.

10:07:58 25 THE COURT: SO IS IT YOUR ARGUMENT THAT

10:11:16 1 AND WE HAVE CRUSHED A COMPETITOR, WHICH WAS AN  
10:11:18 2 EXAGGERATION AS WELL, YOUR HONOR.

10:11:20 3 BUT THAT'S A DIFFERENT QUESTION, HAPPILY  
10:11:22 4 BRIEFED AND ARGUED LATER.

10:11:23 5 BUT IT SHOULDN'T INFLUENCE THE COURT NOW  
10:11:25 6 IN TERMS OF TRYING TO ASSESS, WAS -- WERE THE  
10:11:28 7 DEFENDANTS ON NOTICE OF SPECIFIC CLEAR BEHAVIOR  
10:11:32 8 THAT WAS CLEARLY PROHIBITED, AND DID THEY VIOLATE  
10:11:36 9 THAT WITH FULL KNOWLEDGE?

10:11:38 10 AND THAT'S WHERE I THINK THE COURT  
10:11:41 11 DESERVES A SECOND LOOK AT, AGAIN, THE NATURE OF  
10:11:45 12 WHAT'S SECRET, THAT YOU HAVE TO READ THE TRO IN THE  
10:11:48 13 CONTEXT OF WHAT DOES THE PLAINTIFF CLAIMS ARE  
10:11:51 14 SECRET, WHICH WAS MODIFIED.

10:11:52 15 AND RECALL THE VERY LENGTHY AND EXPANSIVE  
10:11:54 16 LIST OF EXHIBITS.

10:11:55 17 BUT IN DIALOGUE AND IN THEIR FILINGS,  
10:11:58 18 THEY ULTIMATELY ACKNOWLEDGED IT'S ONLY A  
10:12:00 19 COMPILATION, WHICH EVEN THE COURT ACKNOWLEDGED AT  
10:12:03 20 THE TIME OF THE INJUNCTION THAT IT'S ONLY A  
10:12:04 21 COMPILATION.

10:12:05 22 AND, AGAIN, IF THE PLAINTIFFS DON'T SET  
10:12:07 23 FORTH THE COMPENSATORY DAMAGE THAT THEY, THAT THEY  
10:12:11 24 WOULD LIKE, IT'S NOT FOR THE COURT TO HAVE TO  
10:12:14 25 REMEDY THAT FOR THEM.

10:12:16 1 THEY COULD HAVE COME IN AND SAID, HEY,  
10:12:19 2 BECAUSE OF THESE COMMUNICATIONS WHICH VIOLATED, OR  
10:12:21 3 BECAUSE THERE WAS USE OF THIS COMPILATION, WE  
10:12:23 4 SUFFERED A LOSS OF SALES OR WE SUFFERED A SPECIFIC  
10:12:27 5 DAMAGE, AND THEN THAT WOULD BE THE THING TO DO.

10:12:29 6 BUT NOT TO, TO -- NOT TO RAISE THAT BY  
10:12:33 7 REPLY OR OTHERWISE.

10:12:34 8 AND NOT TO ALSO SUGGEST -- THE OTHER  
10:12:36 9 THING LOGICALLY, YOUR HONOR, IT DOESN'T LOGICALLY  
10:12:39 10 FLOW THAT THE USE OF INFORMATION TO WHICH  
10:12:41 11 MR. MAYDER HAD ACCESS FOR A NUMBER OF MONTHS WHILE  
10:12:44 12 HE WORKED THERE, THAT YOU CAREFULLY BALANCED IN  
10:12:46 13 TERMS OF THE SCOPE AND THE ABILITY TO DESIGN AROUND  
10:12:48 14 AND SO ON, YOU DON'T JUST CHANGE THAT AS A MEANS OF  
10:12:52 15 PUNISHING US OR MAKING US COMPENSATE IN A DIFFERENT  
10:12:55 16 FASHION.

10:12:56 17 THAT -- THE ANALYSIS YOU DID IN YOUR  
10:12:58 18 PRELIMINARY INJUNCTION, YOUR HONOR, WAS CAREFUL AND  
10:13:00 19 THOUGHTFUL AND VERY GENEROUS TO VERIGY.

10:13:04 20 BUT IT SHOULDN'T BE -- IT SHOULDN'T BE  
10:13:06 21 UPSET NOW SIMPLY BECAUSE THEY HAVE SUGGESTED THAT,  
10:13:09 22 THAT SOME COMPONENTS OF THAT COMPILATION FOUND  
10:13:15 23 THEIR WAY INTO, INTO USEFUL ACTIVITIES OF THE  
10:13:17 24 DEFENDANTS.

10:13:18 25 THE COURT: OKAY. THANK YOU.